

INTRODUCTORY LOCAL LAW 1 OF 2019

A LOCAL LAW CREATING AN NEW CHAPTER 234 OF THE VILLAGE CODE, TO THE ISSUANCE OF PERMITS FOR PEDDLING AND SOLICITING WITHIN THE BOUNDARIES OF THE VILLAGE OF WOODBURY

Be it enacted by the Village Board of Trustees of the Village of Woodbury as follows:

Section 1. Chapter 234 Peddling and Soliciting. The Village Code of the Village of Woodbury is hereby amended by inserting the following new chapter:

Chapter 234 - Peddling and Soliciting

§234-1 Definitions

As used in this chapter, the following terms shall have the meanings indicated:

OFFICER IN CHARGE - The officer in charge of the Town of Woodbury Police Department is authorized by the Chief of Police to perform the acts of the Chief of Police for the purposes of this chapter.

PEDDLER, HUCKSTER, HAWKER, VENDOR AND SOLICITOR - Includes, unless otherwise herein provided, any person who engages in merchandising any goods, wares, commodities, books, periodicals or services or solicits contributions of goods or moneys by going from house to house, place of business to place of business or in any public street or public place or by temporarily occupying a room, building or other premises therefor.

PERSON - Includes one or more persons of either sex, natural persons, corporations, partnerships, associations, joint-stock companies, societies and all other entities of any kind capable of being sued.

TEMPORARY OCCUPANCY - A store, room, building, tent, enclosure, parking lot or structure of any kind intended to be used or occupied for the period of time necessary to peddle, vend or solicit the merchandise sold therein. In all prosecutions for the violation of this chapter, the intent of the defendant to conduct an established place of business shall be a material fact, and the burden of proving such intent shall be upon the defendant in such prosecution.

§234-2 License required

It shall be unlawful for any person within the territorial limits of the Village of Woodbury to act as a peddler, huckster, hawker, vendor or solicitor as herein defined without first having obtained and paid for and having in force and effect a license therefor.

§234-3 Exemptions

A. The provision of § 234-2 shall not apply to:

- 1) An honorably discharged soldier, sailor or marine who is crippled as a result of injuries received while in the naval or military service of the United States.
- 2) A wholesaler selling articles to dealers or merchants who have an established place of business within the Village of Woodbury.
- 3) A truck gardener or farmer who, himself or through his employees, sells products of his own farm or garden located within the Village of Woodbury.

- 4) A child regularly attending any public or private school within the County of Orange or a representative of any church maintaining a place of worship within the Village of Woodbury or a member of a veterans' organization, provided that such organization maintains a chapter, post, lodge, camp or other group within the Village of Woodbury, or a member of a fraternal organization, any firemanic organization or a civic group, provided that such fraternal organization, firemanic organization or civic group maintains a chapter or local organization within the Village of Woodbury. It is further provided that any person within the provisions of this exemption shall hawk, peddle or solicit only as part of an authorized activity of the organization of which he is a member or of the school or church which he attends, and is further provided that no person exempted by this subsection receives any compensation for any such activity here exempted. All individuals 17 years and under must be under direct adult supervision at all times within 300 feet of where solicitation is occurring.

B. All persons and organizations soliciting funds solely for charitable or other purposes who are exempted from the license requirements under this chapter shall be required, prior to soliciting, to file with the Village Clerk a list identifying all persons soliciting funds within the Village ; which list shall contain at least the name and the address of the person soliciting, the area to be solicited and the date or dates of such solicitation. The Village Clerk will issue a permit that must be carried by each individual.

§234-4 Applicability to veterans and their widows

This chapter shall apply to veterans and their widows holding licenses issued by the County Clerk of Orange County or otherwise under §32 of the General Business Law of the State of New York, who are hereby prohibited from violating any of the provisions of this chapter and are required to obtain a local license from the Village of Woodbury as herein provided.

§234-5 Application for license

Every applicant for a license shall submit to the Village Clerk a written verified application, setting forth the following information:

- a) Name, age and address of the applicant
- b) Permanent home residence and the address of his current place of sojourn if different from his home address
- c) Name and address of all entities whose products he intends to sell or for which he intends to solicit orders.
- d) That he/she has never been convicted of a felony or misdemeanor or, if so, giving the details
- e) A detailed statement of the particular business, trade or occupation for which the license is requested
- f) All municipalities (name and state) in which the applicant has carried on the business of peddling, huckstering, hawking, vending or soliciting orders during the six months immediately preceding the application
- g) A statement of the name, address and telephone number of any person and of any corporation supervising the applicant's local selling activities under a contractual or employment arrangement
- h) The number and kind of vehicles, if any, to be used by the applicant in carrying on the business for which the license is requested
- i) The kinds of goods, wares and merchandise he desires to sell or the kind of service he desires to render
- j) Copies of all forms of order and of receipt used by the applicant in soliciting sales or orders.
- k) The names and addresses of all partners, if a partnership, and the names and addresses of the principal officers, if a corporation

- l) The name and address of a person upon whom a legal notice or process may be served.
- m) Appended to the application, a letter of authorization from each entity supplying any property or services to be sold or for which orders are to be solicited by the applicant.
- n) If the applicant is a nonprofit corporation of the State of New York, a certified copy of its certificate of incorporation, together with any amendments or supplements thereto, and a copy of the letter from the federal government declaring such organization to be exempt.
- o) The applicant will voluntarily submit to fingerprinting for the purpose of positive identification. Upon completion of this process, the fingerprint card(s) will be returned to the applicant.
- p) Such other information as may be required by the Village Clerk.

§234-6 Investigation of applicants.

A. When the application is properly filled out and signed by the applicant, the original and duplicate thereof shall be filed with the Village Clerk, and the Village Clerk shall refer the original to the Chief of Police or officer in charge, who shall make or cause to be made, within five days, an investigation of the applicant.

B. If, as a result of such an investigation, the applicant is found to be unsatisfactory, the Chief of Police or officer in charge shall endorse on such application his disapproval and his reasons therefor and shall return said application to the Village Clerk. Any determination by the Chief of Police or officer in charge that an application is unsatisfactory shall be based on one or more of the following findings with respect to the applicant:

- 1) The applicant is wanted by a law enforcement authority.
- 2) Prior violation of a peddling or soliciting ordinance or law in the Village of Woodbury.
- 3) The applicant has a suspended or revoked driver's license or his driving privileges are suspended or revoked.
- 4) The applicant is a New York State Level 3 sex offender.
- 5) Any further investigation deemed necessary by the Chief of Police or officer in charge.

C. In the absence of any such finding, the Chief of Police or officer in charge shall find the application satisfactory, shall endorse his approval on the application and shall return the application to the Village Clerk.

§234-7 Denial or issuance of license.

A. If an application is found unsatisfactory by the Chief of Police or officer in charge and he has endorsed his disapproval upon the application, the Village Clerk shall notify the applicant by certified mail that the application is disapproved and shall deny the applicant a license.

B. Upon receipt of the fee, application and report of the Chief of Police's or officer in charge's investigation and upon compliance with all the requirements of this chapter, the Village Clerk shall issue a license to the applicant, specifying the particular business authorized. This license shall be nontransferable. It shall be in the continuous possession of the licensee while engaged in the business licensed. The license shall be produced upon the demand of any police or law enforcement officer and shall be exhibited to each prospective buyer or person solicited before making any offer or solicitation.

C. Where an organization has several agents peddling, huckstering, hawking, vending, soliciting or distributing merchandise or printed material, each agent shall be registered separately, and each shall pay the appropriate fee. Upon the expiration of a license, a new license will be issued upon compliance

with all the provisions of this chapter and the payment of fees, except that the investigation and waiting period therefor may be waived if approved by the Village Clerk and Chief of Police or officer in charge.

§234-8 License fee; expiration.

The license fee to peddlers, hucksters, hawkers, vendors or solicitors shall be \$100, which permit shall be in effect for 60 days and may be renewed for an additional sixty-day period upon payment of an additional fee of \$100. The licensing fee for a permit of 60 days or more shall be \$400 and shall expire on December 31 of the year in which it is obtained.

§234-9 Restrictions.

A. A licensed peddler, huckster, hawker, vendor or solicitor shall:

- 1) Not falsely or fraudulently misrepresent the quantity or quality of any article offered for sale or offer for sale any unwholesome, tainted, expired, outdated or diseased provisions or merchandise.
- 2) Keep the vehicles and receptacles used by him in a clean and sanitary condition and the foodstuffs and edibles offered for sale well covered and protected from dirt, dust and insects.
- 3) Not peddle, huckster, hawk, vend or solicit before 9:00 a.m. or after sunset.
- 4) Not sell any confectionery or ice cream within 250 feet of any school between the hours of 8:00 a.m. and 4:00 p.m. on school days.
- 5) Not permit any vehicle used by him to stop or remain on any crosswalk.
- 6) Not create or maintain any booth or stand or place any barrels, boxes, crates or other obstructions upon any street or public place for the purpose of selling or exposing for sale any goods, wares or merchandise.
- 7) Not blow a horn, ring a bell or use any other noisy device to attract public attention to his wares or shout or cry out his wares. This restriction on devices to attract public attention shall also include strings of lights, music and any other device to attract public attention to the peddler's wares; it being the intention of these restrictions to prevent the creation of a circus effect. However, this restriction shall not apply to an ice cream vendor who attracts attention to his wares by ringing a bell or playing music, so long as it is done during the specified times of 9:00 a.m. to sunset and while in motion. When stopped, the noise device cannot be in use.
- 8) Not stand, peddle, huckster, hawk, vend, solicit or solicit funds on the premises of any business establishment, shopping center or mall without the written consent of the owner or individual agency or organization responsible for the management and/or operation of the same.
- 9) Not willfully misstate any fact about any article offered for sale.
- 10) Not enter upon any residential premises clearly displaying a sign with letters at least one inch in height reading "Peddlers and Solicitors Prohibited."
- 11) Not enter upon any residential premises when the owner of such premises has enrolled in the "No Solicitation" program maintained by the Village Clerk. A copy of a list of these premises will be given to the applicant at the time the license is issued.
- 12) All individuals must use the front door of all houses and/or buildings to be solicited.

B. No license may be issued to any person under 18 years of age.

C. No peddler, huckster, hawker, vendor or solicitor shall sell or offer for sale any foods, goods, wares, merchandise or services within the 250 feet of any New York State or Orange County highway within the Village of Woodbury.

D. All persons who peddle, huckster, hawk or sell within the Village of Woodbury, whether they are required to secure a permit or are exempt because they are a handicapped veteran, shall be required to maintain and clean up an area within a radius of 100 feet from where they sell merchandise. Such cleanup shall be done immediately after the peddler, huckster or hawker has completed operations at the end of each day.

E. No signs shall be permitted advertising the sale of such products or merchandise unless such signs are securely attached to the property where such merchandise is sold.

F. All peddlers, hucksters, hawkers, vendors or solicitors must have written permission from property owners to sell or offer for sale any foods, goods, wares, merchandise or services on private property prior to the issuance of the peddler's permit. The property owner shall be required to sign an agreement that within one week of the expiration of the peddler's permit or after the peddler ceases operations, the property owner will be responsible for cleaning the property.

G. There shall be no peddling, huckstering, hawking, vending or soliciting within state, county or Village rights-of-way.

H. No peddler shall be permitted to peddle any merchandise closer than 1,000 feet to any local business selling a similar product.

§234-10 Appeals.

Any person aggrieved by the action of the Chief of Police or officer in charge or of the Village Clerk in the denial of a license, as provided in § 234-7 of this chapter, shall have the right of appeal to the Village Board. Such appeal shall be taken by filing with the Board, within 14 days after the notice of the action complained of has been mailed to such person's last known address, a written statement setting forth fully the grounds for appeal. The Village Board shall set a time and place for a hearing on such appeal, and notice of such hearing shall be given in the same manner as provided in § 234-12 of this chapter for notice of hearing on revocation. The decision of the Village Board on such appeal shall be final and conclusive.

§234-11 Suspension of license.

Whenever the Village Clerk shall have information and belief that any person to whom a license has been issued under this chapter has violated any of the provisions of this chapter or that any promoter, agent or solicitor of a permit holder has misrepresented the purpose of the solicitation, the Village Clerk shall immediately suspend the license temporarily and give the license holder written notice by certified mail of a hearing to be held within 10 days of such temporary suspension to determine whether or not the license should be suspended. This notice must contain a statement of the facts upon which the Village Clerk has acted in suspending the license. If, after such hearing, the Village Clerk finds that the chapter has been violated and the purpose of the solicitation has been misrepresented, he or she shall, within 10 days after the hearing, suspend the license and give the applicant written notice of the suspension and the reasons therefor. Such suspension shall be appealable to the Village Board in the manner set forth in § 234-10 of this chapter, except that the Village Clerk shall bear the burden of proof. Any conviction of the license holder, its employees, agents or representatives of a violation of any provision of this chapter shall be prima facie grounds for suspension.

§234-12 Revocation of license.

A. Licenses issued under the provisions of this chapter may be revoked by the Village Board after notice and hearing for any of the following causes:

- 1) Fraud, misrepresentation or a materially incorrect statement contained in the application for a license.
- 2) Fraud, misrepresentation or a materially incorrect statement made in the course of carrying on the business of peddler, huckster, hawker, vendor and solicitor.
- 3) Any violation of this chapter.
- 4) Conviction of any crime, misdemeanor or violation.
- 5) Conducting the business of peddler, huckster, hawker, vendor or solicitor in an unlawful manner or in such manner as to constitute a breach of the peace or to constitute a menace to the health, safety or general welfare of the public.

B. A notice of the hearing for the revocation of a license shall be given by the Village Clerk, in writing, setting forth specifically the grounds of complaint and the time and place of the hearing. Such notice shall be mailed, postage prepaid, to the holder of the license at the address given on the application at least 10 days prior to the date set for the hearing or shall be delivered by an agent of the Village in the same manner as a summons at least three days prior to the date set for the hearing.

§234-13 Keeping of records.

It shall be the duty of the Village Clerk to keep a record of all applications and of all licenses granted under the provisions of this chapter, giving the number and date of each license, the name and residence of the person licensed, the amount of the license fee paid and also the date of revocation of all licenses revoked.

§234-14 Penalties for offenses.

Any person committing an offense against any provision of this chapter shall, upon conviction, be guilty of a violation pursuant to the Penal Law of the State of New York, punishable by a fine not exceeding \$250 or by imprisonment for a term not exceeding 15 days, or by both such fine and imprisonment. The continuance of an offense for each day (24 hours) shall be deemed a distinct and separate violation.

§234-15 Enforcement.

This chapter is enforceable by the Town of Woodbury Police.